

## **complaint**

Mr K complains about Barclays Bank UK PLC's treatment of his sole trader business account, saying it was inappropriate, following fraudulent funds being received into that account. He's seeking more compensation from Barclays than it's already offered to pay him, in recognition of the treatment being flawed, and also for it having filed a negative marker with cifax about use of the account.

Mr K has been represented by solicitors since bringing his complaint here.

## **background**

On 4 January 2018, £2,000 was transferred into Mr K's account and then immediately withdrawn. Barclays was contacted that day by the remitter of the funds who also banked with Barclays and said that the receipt of the funds was fraudulent. Barclays blocked the account before trying to contact Mr K to discuss the activity on the account.

On the same day, £500 and £250 was also withdrawn from Mr K's account. He eventually told Barclays that he hadn't authorised these transactions. Barclays hadn't been able to speak with Mr K by 27 February, so it decided to close the account. It also filed a marker with cifax noting the account had been misused.

Mr K says that Barclays' treatment of the account and the filing of the cifax marker caused him distress and inconvenience and he specifically says that it affected his ability to get work. He also asked to be refunded the £750 that was taken from his account as well as £419.02 that was the balance on his account retained by Barclays as fraudulent funds.

Barclays did attempt to contact Mr K a few times between 18 January and 8 February, unsuccessfully, before Mr K called the bank himself on 8 February. But he didn't pass Barclays' security checks and it therefore asked him to go into a branch to discuss the matter. As this hadn't happened by 27 February, Barclays closed the account and filed the marker with cifax.

Mr K went into branch again on 21 June after he tried to open a new account with another bank and was declined. Barclays explained what had happened and provided Mr K with copy statements. Mr K initiated a complaint, after approaching this Service, which was passed to Barclays in October. Barclays rejected all elements of Mr K's concerns.

I don't need to go into great detail as to the investigation carried out by our investigator, or what representations were made by him and the parties to this dispute, before a basis for the dispute's settlement was proposed. I will simply record that Barclays has offered to (and our investigator endorsed this offer):

- remove the marker filed with cifax on the basis that it now accepts that Mr K didn't 'misuse' the account;
- refund to Mr K the £250 and £500 withdrawals on the basis that he didn't authorise them to be made;
- pay Mr K the £419.02 that was removed from his account on the basis that was incorrectly identified as the remainder of the fraudulent funds the account received;
- pay simple interest at the rate of 8% on each of the above three amounts from the date that the funds left the account until the date that each sum is paid to Mr K; and

- pay £600 compensation to Mr K for the distress and inconvenience caused to Mr K throughout this whole affair (the offer of this compensation was subsequently increased to £700 after Barclays wasn't able to remove the filed cifax marker as speedily as it indicated it would).

Mr K declined this offer of settlement and subsequently declined the revised offer with the slightly increased amount of £700 compensation. In short, Mr K asked for compensation for the loss of earnings he suffered as a result of the bank's actions. But the investigator wasn't provided evidence of any specific, lost work opportunities, just information in respect of tax returns which showed that Mr K enjoyed less turnover during the financial year 2018/19 than he did during the comparative period of 2017/18.

The investigator thought this didn't provide sufficiently persuasive evidence that his reduced income in the later year was specifically as a result of the bank's actions, and particularly because Mr K couldn't get a replacement bank account for the one that Barclays closed. He said the reduced value of his work might have arisen from any number of reasons, for instance, there simply being less work available.

He also noted Mr K earned more in 2017/18 than he had in 2016/17 and he concluded it was entirely possible that 2017/18 was an anomaly, a year when Mr K was able to get more work than he had previously or subsequently, regardless of the situation with his bank account.

In short, the investigator didn't think there were any identifiable financial losses that Barclays should compensate Mr K for, arising from the bank's actions. In reply, Mr K has asked that his complaint be reviewed by an ombudsman on the basis that he should be entitled to a greater level of compensation.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note that one of the concerns expressed by Mr K's solicitors was that, even as the investigator was endorsing the offer of £600 compensation made by the bank for its actions, including for incorrectly filing the cifax marker and only later agreeing to remove it, the marker had still to be removed and was still affecting Mr K.

Of course, I'll take into account the actions of the bank in their entirety - and the impact of those actions on Mr K, where they were flawed, also in their entirety - when I determine what compensation the bank ought to pay to Mr K, in settlement of this whole complaint.

I do note though that Mr K's solicitors have also – in respect of the compensation to be paid to Mr K – said that £600 (and even £700) is inadequate for his loss of earnings, hardship, and cost of representation. Concern was repeated about the bank's letters to Mr K's old address and phone calls to an invalid mobile number, when they were trying to contact him. And it has also said – in respect of the bank not removing the cifax filing promptly – that Mr K had two further, wasted visits to banks to open a new account which were never going to be successful and which were always going to be frustrating and difficult given his difficulty with speaking English.

Mr K, also believes he informed the bank of his card being retained when he tried to use it as early as 5 January, although in his own chronology, he admits that he had no valid

identification to evidence he was Mr K so there was inevitably a limit to how much the bank could assist Mr K at that time. Barclays also has no record of that meeting.

But even if that was the case, Barclays didn't seek to act on its blocking of the account until later in January. That said, although there's no doubt the bank ended up acting quite inefficiently in its efforts to contact Mr K in the aftermath of the fraudulent payment being made to the account – it does acknowledge that its administration of Mr K's contact address and phone number was flawed – it's offered significant compensation for its poor administration.

And it does remain that Mr K did not promptly pursue any concerns he may have had, given the account was blocked on 4 January and he says his card was retained the next day. He only ever formalises a complaint in October 2018. Mr K's actions don't excuse the slowness of what Barclays did, or that it did so with a poor standard of administration, but when deciding what level of compensation Mr K ought to be entitled to, I can't disregard his significant failure to mitigate harm to himself by taking so many months to sort things out.

Most recently, Mr K's solicitor has written that:

- a recent conversation between Mr K and Barclays, in branch, facilitated by his solicitor, uncovered what is suggested to be the administrative failings that led to Barclays using an incorrect address and phone number to contact him. And, despite the cifax filing having been removed, Barclays still wasn't prepared to offer a new account;
- I should make an award taking into account the bank's breach of its contractual obligations, primarily its unjustified withdrawal of banking facilities and actions that prevented Mr K obtaining banking facilities elsewhere. I accept that the solicitors have set that out in greater detail and asserted that their claim is supported with legal principles; and
- his legal costs should be covered by Barclays as he wasn't able to bring any complaint forward himself due to him being, predominantly, non-English speaking.

I've carefully thought about everything that's been said and the evidence presented. First, I'm afraid that I can see no basis for Mr K needing legal representation in taking this matter forward. The complaint is relatively straightforward in nature. The bank responded to allegations made about use of his account in a routine manner, blocking the account, seeking to discuss the account activity with their customer, closing the account and filing a cifax marker in the absence of an explanation about the account activity.

Obviously, that was made more difficult for Mr K to deal with because of Barclays' administrative failings and also, understandably, because of language difficulties. But that would only have required Mr K to seek translation assistance and once the complaint was referred here, we provide such support. So, I can't accept that the bank should be required to cover Mr K's legal costs I'm afraid.

As regards the issue of the bank acting incorrectly in closing the account, I don't agree that this was the case. Barclays was entitled to cease its relationship with Mr K. The account had received fraudulent funds and it was entitled to look to close the account. Even if Mr K had promptly provided an explanation about his innocence in respect of the funds being received, Barclays was entitled to be sufficiently concerned about the fact they'd been received that it needn't have been obligated to allow the account to continue in existence.

Whether the bank ought to have offered new banking facilities is a separate matter but, predominantly, that's a commercial judgement that I would be most unlikely to interfere with. In this matter, given the activity that occurred on Mr K's account, and given that Mr K hadn't given reassurance to the bank about the circumstances in which his account received the fraudulent funds, even taking account of the bank having used outdated communication details, I can't fairly and reasonably say that the bank is acting inappropriately in declining Mr K further banking facilities.

Of course the bank should have done things better, and this would have meant that the cifa marker wouldn't have been filed for so long, and the bank should pay compensation for that. But it's offering to do so and I need to decide whether the current offer it's made, £700, is adequate. Having taken into account the bank's administrative failings, Mr K's failure to mitigate, for himself, the impact of those failings, the difficulties he's had with not having an account and getting a new one, and what's recently been said about the practical difficulties of his dealings with the bank, I am minded to say that £700 is appropriate compensations.

I agree with the investigator in saying that it hasn't been adequately established that the bank's actions have led to Mr K suffering a lack of earnings. And I'm satisfied that £700 is appropriate compensation here given the basis on which I'm required to make money awards in determination of a complaint.

In light of all I've said I agree with the investigator in how he set what appropriate settlement of this complaint should look like. In setting out my final decision, I'll detail all that the bank should pay to resolve this complaint but if any element of that award has already been paid then the bank need not pay it again.

### **my final decision**

In full and final settlement of this complaint, Barclays Bank UK PLC must pay to Mr K – if it hasn't already done so:

- £250, £500 and £419.02;
- interest, calculated at 8% simple per annum, on each separate amount above, calculated from the date it should have been paid to Mr K, until the date it is paid; and
- £700 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 May 2020.

Ray Neighbour  
ombudsman